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| 09/857,347      | 01/04/2002  | Eric Sitbon          | P07245USOO/DEJ      | 3171             |

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EXAMINER

BRITTAIN, JAMES R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3677

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/857,347

Applicant(s)

SITBON, ERIC

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-11,14-16,20,21,24,25,34-36,44,47 and 49 is/are rejected.
- 7) ☒ Claim(s) 2,7,12,13,17-19,22,23,26-33,37-43,45,46 and 48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Allowable Subject Matter***

The indicated allowability of claims is withdrawn in view of the newly discovered reference(s) to Ellis (US 2389298), Gilbert (FR 2543676), Carley (US 2110645), Hicks (US 5926925), and JP 63-282601. Rejections based on the newly cited reference(s) follow.

Claims 2, 7, 12, 13, 17-19, 22, 26-33, 37-43, 45, 46, and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Drawings***

The drawings are objected to because of the use of terms in French in the drawings. As these terms are not in English they are objected to and appear to be unnecessary. It is suggested that the terms be dispensed with. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on December 3, 1998. It is noted, however, that applicant has not filed a certified copy of the French application as required by 35 U.S.C. 119(b).

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No certified copy is in the file and this is reflected in Form PCT/DO/EO/903 that does not list the certified copy of the French application. MPEP 1893.03(c) addresses this issue and the pertinent portions is provided below:

If applicant has not forwarded a certified copy of the priority application in time for the International Bureau to forward it to the U.S. Designated Office with the copy of the international application, then applicant will have to provide a certified copy of the priority document during the national stage to fulfill the requirement of 37 CFR 1.55(a)(2).

Applicant asserts that the Office received the priority document as indicated in the Notification of Missing Requirements mailed December 5, 2001 and that the failure to list the priority document in the Notice of Acceptance of Application mailed January 15, 2002 was in error. The French priority document is not in the application and the last filed notification informs applicant of the acceptance of this case as a national stage filing and supercedes the prior notification and is controlling as a listing of information in this file and is reflected in the contents of the file in the Office.

### ***Claim Objections***

Claims 1, 20, 25, 41, 42, 45, 46, and 49 are objected to because of the following informalities: Claims 1, 41, 42, 45, and 46 include artifacts from the underlining process that appears to seek to insert spaces such as in claim 1, line 4. It is not clear if this is the case or if some words have been left out. Underlining is for words, punctuation or other meaningful substantial changes not spaces that have no significance and only serve to raise the issue of whether something of significance has been left out. In other words, indent if that is what is desired and leave out the underlining. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 49 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 49 is indefinite because the passage "such as ... or other types of leather goods" (lines 1-2) does not positively indicate whether the accessories are limited to leather goods or any other structure following "such as". The scope is not clear as to what other items may be included since "such as" is indefinite as to setting the boundaries of coverage.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 14, 16, and 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ellis (US 2389298).

Ellis (figures 10, 11) teaches a device for holding together, adjusting, fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a second part 11A containing a second magnet 12AA subject or submitted to the

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magnetic attraction of the first magnet, wherein the first and second part are used to hold together, adjust, fit or fasten the garment when activated by a user by placing them together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath. As to claim 14, the U-shaped magnets 12BB, 12AA have a polarization similar to that shown in figure 2 (page 2, col. 1, lines 3-6) as is conventional for U-shaped magnets and as such have a surface that is polarized differently at each end of the U-shape. In regard to claim 16, there are two poles on the U-shape magnet so it is multipolar.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8-11, 20, 44, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2389298).

Ellis (figures 10, 11) teaches a device for holding together, adjusting, fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a second part 11A containing a second magnet 12AA subject or submitted to the magnetic attraction of the first magnet, wherein the first and second part are used to hold together, adjust, fit or fasten the garment when activated by a user by placing them

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together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath. The difference is that first and second parts are formed as straps. However, Ellis teaches that magnetic fasteners are desirable for securing belts together as shown in figures 8 and 9. As it would be desirable to use the enhanced adjustability obtained by the sliding magnet of the fastener of figures 10 and 11 on other types of garments such as the adjustable belt of figures 8 and 9, it would have been obvious to utilize the fastener of figures 10 and 11 on a belt as suggested by figures 8 and 9 of Ellis. In regard to claim 6, the magnets form the areas of the strap that are magnetic. As to claims 8-11, Ellis teaches that it is desirable to utilize disks 39 39A that are cylinders of small height (figures 15-17) as magnetic fasteners or ferromagnetic plates attracted to magnets, thereby rendering obvious the use of a circular shape or cylindrical shape. In regard to claim 20, the magnets 12AA, 12BB are separated by fabric, yet still maintain the magnetic connection so as to function as fasteners. Therefore, the particular relation of the separation between the separation of the elements and the width of the elements as being less than one-twelfth the width is a matter of routine experimentation and obvious over the teachings of Ellis. As to claim 44, Ellis envisions using the fastener in many different applications such as shoes (page 3, col. 2, lines 43-49). Hence, the use of the fastener of figures 10 and 11 on shoes would have been obvious.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2389298) in view of Gilbert (FR 2543676).

Ellis (figures 10, 11) teaches a device for holding together, adjusting, fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a second part 11A containing a second magnet 12AA subject or submitted to the magnetic attraction of the first magnet, wherein the first and second part are used to hold together, adjust, fit or fasten the garment when activated by a user by placing them together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath. The difference is that the magnet is U-shaped and not a bar so that the polarization would be parallel to the sheath. However, Gilbert (figures 1, 2) teaches placing a bar magnet 14, 18 within a guide 16 as having a desirable geometry within a guide. As it would be desirable to enhance the movement of the magnets in the sheaths of Ellis so as to better perform the fastening function, it would have been obvious to modify the shape of the magnets so as to be bar magnets in view of Gilbert (figures 1, 2) teaching placing a bar magnet 14, 18 within a guide 16 as having a desirable geometry within a guide.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2389298) in view of JP 63-282601.

Ellis (figures 10, 11) teaches a device for holding together, adjusting, fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a



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second part 11A containing a second magnet 12AA subject or submitted to the magnetic attraction of the first magnet, wherein the first and second part are used to hold together, adjust, fit or fasten the garment when activated by a user by placing them together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath. The difference is that the magnet is U-shaped without rounded edges. However, JP 63-282601 (figure 1) teaches that round surfaces on the magnet or ferromagnetic element 12 within the tube 11 that is under the influence of the magnets 13 is desirable to guide the element 12 through the tube with little friction. As it would be desirable to enhance the movement of the magnets in the sheaths of Ellis so as to better perform the fastening function, it would have been obvious to modify the shape of the magnets so as to have rounded edges in view of JP 63-282601 (figure 1) teaching that round surfaces on the magnet or ferromagnetic element 12 within the tube 11 that is under the influence of the magnets 13 is desirable to guide the element 12 through the tube with little friction.

Claims 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2389298) in view of Hicks (US 5926925).

Ellis (figures 10, 11) teaches a device for holding together, adjusting, fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a second part 11A containing a second magnet 12AA subject or submitted to the magnetic attraction of the first magnet, wherein the first and second part are used to hold

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together, adjust, fit or fasten the garment when activated by a user by placing them together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath. The difference is that at least one magnetic or ferromagnetic element is not glued, welded or embedded on a support plate. However, Hicks (figure 4) teaches that it is desirable to embed a neodymium-iron-boron magnet 20 in a plastic plate so as to have the magnet protected by a material that displays indicia readily. As it would be desirable to have the magnet of the fastener of Ellis better protected and more readily capable of displaying indicia, it would have been obvious to modify the fastener of Ellis to have the magnet embedded in a support plate in view of Hicks teaching that it is desirable to embed a neodymium-iron-boron magnet 20 in a plastic plate so as to have the magnet protected by a material that displays indicia readily. As to claim 25, a strong magnet is desirable and Hicks suggests that a neodymium-iron-boron magnet has desirable characteristics of field strength.

Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2389298) in view of Carley (US 2110645).

Ellis (figures 10, 11) teaches a device for holding together, adjusting, fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a second part 11A containing a second magnet 12AA subject or submitted to the magnetic attraction of the first magnet, wherein the first and second part are used to hold together, adjust, fit or fasten the garment when activated by a user by placing them

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together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath. The difference is that the U-shaped magnets 12AA lack apertures for attachment by sewing threads wherein there is a channel between two holes or a cupel between the two holes. However, Carley (figures 2, 5, 6) teaches that it is desirable to use a geometry for sew-on buttons with either a channel (figure 5) or cupel (figure 6) between openings so as to protect the threads and create a geometry of greater strength. As it would be desirable to attach the magnet 12AA of Ellis so that it is securely fastened to the substrate, it would have been obvious to modify the fastener of Ellis so that the magnet 12AA is attached by sewing threads wherein there is a channel between two holes or a cupel between the two holes in view of Carley (figures 2, 5, 6) teaching that it is desirable to use a geometry for sew-on buttons with either a channel (figure 5) or cupel (figure 6) between openings so as to protect the threads and create a geometry of greater strength.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'James R. Brittain', written over a horizontal line.

James R. Brittain  
Primary Examiner  
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JRB